

Submitted by
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PROBLEM

HB 4152 known as PA 54 of 2011 gave rise to a legal problem by creating a conflict between it and the PA 312 improvements made last session.

It has completely frustrated the police and fire contract bargaining process and is forcing many them to take contract disputes to binding arbitration known as PA 312 "three twelve". This is despite the Legislature passing legislation to reform PA 312 last year to expedite the police and fire contract bargaining process.

BACKGROUND

When both chambers passed House Bill 4152, legislators were told and believed it did NOT affect fire fighters and policemen, despite those registering our concern. Now, in contract negotiations fire fighters and police have since been told PA 54 does apply to them.

Because municipalities are applying PA 54 to fire and police contract negotiations, this is resulting in a push towards PA 312, making it necessary to fix the unintended consequences of last session's legislation.

There are several problems created by the conflict between PA 54 and PA 312:

1. Instead of the historical level of only 5% of contracts going to PA 312 arbitration, a much greater percentage of contracts are expected to now go through this process, resulting in longer contract negotiations and greater costs to employers and bargaining groups.
2. Employee retention problems are now expected without the ability to grant step increases, threatening the experience levels of our public safety personnel. This is due to the fact that when fire or police personnel are promoted to higher level ranking positions, there are always step increases that occur in the first 1-2 years after promotion. Under PA 54, those ranking experienced officers will not be duly compensated for their new responsibilities.
3. Suppression of pay for new hires is making it more difficult to hire top quality first responders. New hires in fire and police always start out at a lower wage and are stepped up over usually a five year period until they reach full pay. Entry level pays are very low and designed to be only for a short period of time.

4. Step increases in fire and police services are an EMPLOYER benefit that was bargained into contracts to save money. Employee bargaining would rather not have them and the steps certainly do not encourage these groups to settle faster.

Applying PA 54 completely contradicts the idea of streamlining the 312 process.

SOLUTION - Amend PA 54 with HB 5097 (introduced October 23rd and referred to the House Commerce Committee), which will:

1. Eliminate the conflict in law.
2. Allow streamlined 312 processes to work.
3. Allow employers to negotiate retroactive pay if warranted.
4. Allow employer initiated step increases to go into effect again.
5. Make police and fire fighting jobs attractive again to top quality candidates.

Legislative Analysis



FREEZE WAGES AND BENEFITS DURING PUBLIC EMPLOYEE CONTRACT NEGOTIATIONS

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House Bill 4152 (Substitute H-2)

Sponsor: Rep. Marty Knollenberg

1st Committee: Oversight, Reform, and Ethics

2nd Committee: Education (re-referred 2-1-11)

First Analysis (3-2-11)

BRIEF SUMMARY: The bill would amend the Public Employment Relations Act to require that wage levels and benefit levels be "frozen" during contract negotiations (prohibiting step increases); prohibit wages and benefits under a new contract from being made retroactive to the expiration date of the former contract; and require that any increase in the cost of maintaining insurance benefits at the level in an expired contract be borne by the employee.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the State and local units of government, including school districts, and would vary significantly from one unit to another. To the extent that the bill would prevent wage increases and shift benefit cost increases to employees after a contract has expired and before a new one is in place, it would create savings for public employers.

THE APPARENT PROBLEM:

Customarily, Michigan public school teachers are paid according to their years of classroom teaching experience and highest level of education.

Consequently, a school faculty's salary schedule can be arrayed on a matrix having two axis: one horizontal axis which sets the years of service across the top in one-year increments; and a second vertical axis which lists the annual salary in negotiated increments (of say, three percent) along the side. To determine one's salary, a teacher looks to the cell on the matrix where length of service intersects with highest educational degree (that is, Bachelors, Bachelors+additional credit hours, Bachelors+18 credit hours/Specialist, Masters, or PhD).

Overall, the faculty salary matrix displays all possible step increases, and the incremental amounts of money between each step are negotiated by the collective bargaining team. So, each faculty salary matrix differs in each of the more than 550 school districts across the state. As a teacher gains classroom experience, the teacher's pay increases automatically each year. Further, when a teacher completes post-graduate coursework during the summer at a university (continuing education is required under the law), the teacher's pay increases automatically at a faster rate, and at an even greater amount.

The faculty salary schedule that is collectively bargained generally remains unaltered during a two-year contract. Before a contract expires, a negotiating team representing teachers and administrators meets to consider changes in the salary schedule. In some cases, a school district's contract negotiators will propose a total freeze on wages, including step and rail increases, until a new contract is in place. However, school district officials who do this early in the negotiation process run the risk of violating their duty to bargain in good faith, a requirement under the Public Employment Relations Act.

If a new contract is not in place before the contract's expiration date, negotiators, in an effort to avoid unfair labor practices (that is, violating their duty to bargain in good faith), allow the faculty's step increases to continue automatically under the old salary schedule. So, faculty members receive an incremental salary increase until a new contract is put in place. Further, the faculty's fringe benefits also continue, regardless of any cost increases.

For example, according to committee testimony from the Royal Oak school superintendent: "The 2009-2010 school year commenced within the School District of the City of Royal Oak with the absence of a new negotiated teacher contract. Nonetheless, the school system was required to pay \$430,000 in additional insurance increase, and \$357,000 in step increases based on the expired contract. Michigan Employment Relations Commission (MERC) rulings required that those increases be paid by the school system; increases that the Royal Oak Board of Education did not agree to via the collective bargaining process." The superintendent further testified: "Bargaining continued in Royal Oak in a second year in summer of 2010. At that point, the school system was presented with a second round of automatic step increases ranging from 4% - 12% additional compensation for step-eligible instructors and amounting to \$420,000 in additional costs. The school system also braced for a 17% increase in insurance for our teacher group amounting to \$525,000." In total, then, the Royal Oak School District incurred automatic increases after two years of more than \$1.7 million (\$955,000 in additional health care costs, and \$777,000 in salary step-increases).

Legislation has been introduced that would "freeze" wages and benefits during contract negotiations, and prohibit school officials from making newly negotiated wage and benefit levels retroactive. Further, the legislation would require that any increase in the cost of maintaining insurance benefits at the level in an expired contract be borne by the employee.

THE CONTENT OF THE BILL:

House Bill 4152 (H-2) would amend the Public Employment Relations Act, or PERA (Public Act 336 of 1947), which prohibits strikes of public employees, to require that wage-levels and benefit-levels be "frozen" during contract negotiations. Under the bill, the wages and benefits under a new contract could not be made retroactive to the expiration date of the former contract.

The bill specifies that, except as otherwise indicated in this section, after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement was in place, a public employer would be required to pay and to provide wages and benefits at levels and amounts that were not greater than those in effect on the expiration date of the collective bargaining agreement. The bill also specifies that this prohibition would include increases that would result from wage step increases. Further, employees who received health, dental, vision, prescription, or other insurance benefits under a collective bargaining agreement would be required to bear any increase in the costs of maintaining those benefits that occurred after the expiration date. Under the bill, the public employer would be authorized to make payroll deductions necessary to pay the increased costs of maintaining those benefits.

The bill would prohibit the parties to a collective bargaining agreement from agreeing to, and an arbitration panel from ordering, any retroactive wage or benefit levels or amounts that were greater than those in effect on the expiration date of the collective bargaining agreement.

For a collective bargaining agreement that expired before the effective date of this legislation, the requirements of this section would apply to limit wages and benefits to the levels and amounts in effect on the effective date of this legislation.

The bill defines "expiration date" to mean the expiration date set forth in a collective bargaining agreement, without regard to any agreement of the parties to extend or honor the collective bargaining agreement during pending negotiations for a successor collective bargaining agreement. The bill defines "increased cost" in regard to insurance benefits to mean the difference in premiums or illustrated rates between the prior year and the current coverage year. The difference shall be calculated based on changes in cost by category of coverage and not on changes in individual employee marital or dependent status.

MCL 423.201 to 423.217

ARGUMENTS:

For:

Proponents of the bill say that the mandated automatic salary and benefit increases for school personnel during contract negotiations must stop. Simply put, school districts can no longer afford them. In the Royal Oak School District, taxpayers paid over \$1.7 million in automatic salary and benefit increases over two years before a new contract was put in place. As the superintendent of the Royal Oak School District argued: "Current Michigan Employment Relations Commission expectations, coupled with current economic challenges, have created an environment where there is little incentive for unions to truly bargain...the appropriate neutral position espoused by House Bill 4152 reinforces maintenance of commitment to most-recently-negotiated income and fringe benefits coverage, and gives advantage to neither party in the ensuring and ongoing collective bargaining process."

The Royal Oak superintendent continued: "Unfortunately, compensation and benefits for many professional positions throughout our country were leveled in the past decade due to international competition. Public employees are now viewed as some of the higher wage earners in many communities. The advantages public school unions have accumulated during decades of collective bargaining are now beyond the ability of employing school systems to absorb without affecting the quality of service to students and placing some school systems into deficit status."

Against:

This bill infringes on the collective bargaining rights of public employees, by imposing restrictions on both administrators and union negotiators when they work together, to customize a contract that fits the particular characteristics of a school district. Michigan's more than 550 school districts vary enormously throughout the state: they vary in size, student transport policies, locale, curricular standards, course offerings, technology, textbooks, teacher quality, teacher pay, privatization of non-instructional services, assessment practices, facilities, parental involvement, child-rearing traditions, and more. Throughout Michigan's history, citizens in different regions of the state have sought and fiercely guarded their right to local control of their schools, in order to preserve and protect their local authority to design them to meet local standards. By imposing contract requirements in a paternalistic manner, this bill would diminish local initiative. It significantly weakens the principle of local control.

Further, the bill might well bring collective bargaining to a standstill. Instead of working together to customize a contract that fits the needs of children and the adults who teach them in a particular school district, negotiations will stop. When all elements of a contract are held tight, step increases are stopped, and insurance cost increases assumed by the employee, Boards of Education have no incentive to truly negotiate, especially given the current economic conditions.

POSITIONS:

The Michigan Association of School Boards supports the bill. (2-23-11)

The Michigan Association of Intermediate School Administrators-Region 8 supports the bill. (2-23-11)

The Michigan Association of School Administrators (MASA) and the Michigan Association of Intermediate School Administrators (MAISA) support the bill. (2-23-11)

Royal Oak Schools supports the bill. (2-23-11)

The Thrun Law Firm supports the bill. (2-23-11)

The Grand Rapids Chamber of Commerce supports the bill. (2-23-11)

The Small Business Association of Michigan supports the bill. (2-23-11)

Wayne Regional Education Services Administration (RESA) supports the bill. (2-23-11)

Oakland Schools supports the bill. (2-23-11)

The Michigan Elementary, Middle, and Secondary Principals Association (MEMSPA) supports the bill. (3-2-11)

The National Federation of Independent Business supports the bill. (3-2-11)

The American Federation of Teachers opposes the bill. (2-23-11)

The Michigan Education Association opposes the bill. (2-23-11)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.